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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,936	04/14/2004	Vahid Saadat	021496-000700US	7289
40518	7590	12/12/2006	EXAMINER	
LEVINE BAGADE HAN LLP 2483 EAST BAYSHORE ROAD, SUITE 100 PALO ALTO, CA 94303			KASZTEJNA, MATTHEW JOHN	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 12/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/824,936

Applicant(s)

SAADAT ET AL.

Examiner

Matthew J. Kasztejna

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 16-19, 23, 24, 26-38, 40-43 and 51-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 16-19, 23, 24, 26-38, 40-43 and 51-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 4, 2006 has been entered.

Notice of Amendment

In response to the amendment filed on October 4, 2006, amended claims 11, 3, 16-17, 19, 24, 31, 34 and 37-38; canceled claims 10-15, 20-22, 25, 39 and 44-50; and new claims 51-64 are acknowledged. The current rejections of the claims *stand*. The following new and reiterated grounds of rejection are set forth:

Claim Objections

Claim 24 is objected to because of the following informalities: grammatical errors. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9, 16-19, 23-24, 26-38, 40-43 and 51-64 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,305,121 to Moll.

In regards to claims 1, 31 and 42-43, Moll discloses an apparatus for obtaining endoluminal access, the apparatus comprising: a flexible elongate body 12 having a working axis and a distal region, the elongate body configured for insertion within a body lumen; at least one working lumen within the flexible elongate body; at least one articulating element 17a disposed near or at the distal region of the elongate body, wherein the articulating element is configured to articulate from an in-line position to an off-axis position relative to the working axis of the elongate body (see Figs. 4 and 5).

In regards to claims 2, 19, 32 and 55, Moll discloses an apparatus for obtaining endoluminal access, wherein the articulating element comprises a visualization element configured to image within a body lumen (see Col. 2, Lines 27-48).

In regards to claims 3 and 34-36, Moll discloses an apparatus for obtaining endoluminal access, wherein the articulating element comprises the distal region of the working lumen extending through the elongate body (see Fig. 4).

In regards to claims 4 and 37, Moll discloses an apparatus for obtaining endoluminal access, wherein the apparatus has a delivery configuration in which the articulating element is aligned with or adjacent to the working axis of the elongate body, and a deployed configuration wherein the articulating element is articulated off-axis from the working axis of the elongate body (see Col. 5, Lines 16-47).

In regards to claim 5, Moll discloses an apparatus for obtaining endoluminal access, wherein the articulating element further comprises at least two articulating elements 17a-b (see Fig. 1).

In regards to claims 6-7, Moll discloses an apparatus for obtaining endoluminal access, wherein the at least two articulating elements are configured for independent off-axis articulation or coordinated off-axis articulation (see Col. 3, Lines 10-54).

In regards to claims 8-9, 33 and 41, Moll discloses an apparatus for obtaining endoluminal access, wherein the at least two articulating elements comprise at least two visualization elements configured to provide stereoscopic visualization (see Col. 1, Lines 38-64).

In regards to claims 16-17, Moll discloses an apparatus for obtaining endoluminal access, wherein off-axis articulation of the articulating element is configured to expose a distal opening of the working lumen (see Fig. 4).

In regards to claims 18, 38 and 40, Moll discloses an apparatus for obtaining endoluminal access, wherein the distal opening is covered by the articulating element in the deliver configuration (see Figs. 3 and 5).

In regards to claim 19, Moll discloses an apparatus for obtaining endoluminal access, further comprising a visualization element and wherein off-axis articulation of the articulating element is configured to expose the visualization element (see Figs. 3 and 5).

In regards to claim 23, Moll discloses an apparatus for obtaining endoluminal access further comprising a housing configured to couple the articulating element to the elongate body and to facilitate articulation of the articulating element (see Figs. 1-2).

In regards to claim 24, Moll discloses an apparatus for obtaining endoluminal access, wherein the articulating element is supported on the body by a pair of pivoting links 18a and 18b (see Figs. 1-3).

In regards to claims 26-28, Moll on discloses an apparatus for obtaining endoluminal access, wherein the elongate body is steerable, rigidizable and has a steerable shaft (see Col. 6, Lines 23-53).

In regards to claims 29-30, Moll discloses an apparatus for obtaining endoluminal access, wherein the articulating element further comprises a diagnostic tool. Moll discloses a visualization element comprising a video chip which comprises an image sensor, furthermore the image sensor may be a CCD (see Col. 2, Lines 49-53 and Col. 6, Lines 23-53).

In regards to claims 51 and 60, Moll discloses an apparatus comprising: a flexible body 12 adapted for insertion into a body lumen of a patient; at least one link 17a pivotably attached adjacent to a front end of the body; at least one tool 14a pivotably supported on the link; and a member 18a attached to the tool or the link and extending towards a back end of the body, for moving the tool relative to the body (see Fig. 4).

In regards to claim 52, Moll discloses an apparatus further comprising at least one working lumen in the body (see Fig. 4).

In regards to claims 53-54, Moll discloses an apparatus comprising first and second links pivotably attached to the tool (see Fig. 4).

In regards to claims 56-59, Moll discloses an apparatus wherein the tool is moveable in an arc from a first position (see Fig. 2) adjacent to the body, to a second position (see Fig. 1) spaced apart from the body and wherein the tool is substantially aligned with the working lumen when the tool is in the first position.

In regards to claims 61-64, Moll discloses an apparatus comprising at least two working lumens, and with one or more of the working lumens comprising an insufflation lumen (See Col. 4, Lines 53-68).

Response to Arguments

Applicant's arguments filed October 4, 2006 have been fully considered but they are not persuasive.

Applicant states Moll fails to disclose a working lumen. However, Moll clearly shows a flexible elongate body 12 having a working lumen, as cameras 15a and illumination bundle 20 are passed therethrough to a desired surgical site within a surgical cavity (see Col. 1, Lines 37-65 and Fig. 4).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., camera cover the opening of the lumen and cameras positionable in any useable way at the opening) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant states Moll fails to disclose pivoting movement about a pivot point. However, Moll clearly discloses a pair of pivoting links 18a and 18b, which support the articulating elements 17a and 17b on the flexible body (see Col. 3, Lines 27-68). Furthermore, the articulating element holds the cameras in a fixed position upon deployment as seen in Figure 1.

In regards to claim 58, Moll clearly discloses an apparatus wherein the tool has a front end, and the body has a front end, and wherein the front end of the tool is forward of the front end of the body, when the tool is in the first position (see Fig. 2) and when the tool is in the second position (see Fig. 1).

As broadly as claimed, Moll meets the limitations of all recited claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Kasztejna whose telephone number is (571) 272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

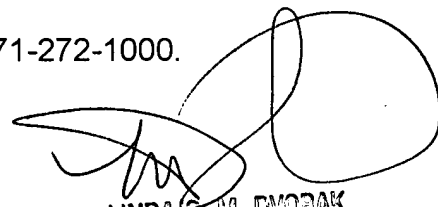
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJK *MJK*

12/7/06



LINDA G. M. IVORAK
SUPERVISOR/ PATENT EXAMINER
GROUP 5700